



Reprinted
February 6, 2004

HOUSE BILL No. 1365

DIGEST OF HB 1365 (Updated February 5, 2004 7:37 pm - DI 84)

Citations Affected: IC 6-2.5; IC 6-3; IC 6-3.1; IC 6-4.1; IC 6-5.5; IC 6-8.1; IC 9-18; IC 9-29; IC 34-30; noncode.

Synopsis: Various state tax matters. Makes the following changes to the sales and use tax: (1) Grants a credit against Indiana use tax for sales tax paid in another state for a vehicle, a watercraft, or an aircraft. (2) Makes the furnishing of satellite television service, cable radio service, and satellite radio service a retail transaction. (3) Indicates that a deduction for sales tax paid on a purchase price that becomes uncollectible is assignable only if the retail merchant that paid the tax assigned the right to the deduction in writing. (4) Requires certain out-of-state entities to collect sales tax in Indiana. (5) Provides that gross retail income does not include receipts attributable to delivery charges or installation charges if those charges are separately stated on the invoice. Requires intangible expenses incurred in certain related member transactions and taken as a deduction for federal income tax purposes to be added back to income for adjusted gross income tax and financial institutions tax purposes. Provides certain exceptions to the add-back requirement. Changes the definition of business income for adjusted gross income tax purposes. Removes the economic development for a growing economy (EDGE) board from the administration of the Hoosier business investment tax credit. Provides that the credit is available for hiring new employees. Removes the
(Continued next page)

Effective: January 1, 2004 (retroactive); March 1, 2004 (retroactive); upon passage; July 1, 2004.

Cochran, Liggett, Kuzman, Espich

(SENATE SPONSORS—BORST, SIMPSON)

January 20, 2004, read first time and referred to Committee on Ways and Means.
January 26, 2004, amended, reported — Do Pass.
February 4, 2004, read second time, amended, ordered engrossed.
February 5, 2004, engrossed. Read third time, made special order of business. Reread third time, recommitted to Committee of One, amended; passed. Yeas 74, nays 19.

HB 1365—LS 7382/DI 51+



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expiration date for the availability of the credit. Provides that for a pass through entity the proportional amount of the credit to which a partner or shareholder of the pass through entity is entitled is applied against the partner's or shareholder's state tax liability. Requires the department of state revenue to compile, make public, and publish on the Internet the names and addresses of delinquent taxpayers who have owed more than \$1,000 in taxes and penalties for more than twelve months. Confers immunity on the department for publishing the information. Repeals the sales tax credit for sales of motor vehicles, trailers, watercraft, and aircraft that are sold in Indiana and titled or registered in another state. Eliminates the \$2 annual fee to renew a permanent registration of a semitrailer. Repeals the registration fee for a converter dolly.

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February 6, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1365

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-2.5-1-5, AS AMENDED BY P.L.257-2003,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 5. (a) Except as provided in subsection (b),
4 "gross retail income" means the total gross receipts, of any kind or
5 character, received in a retail transaction, including cash, credit,
6 property, and services, for which tangible personal property is sold,
7 leased, or rented, valued in money, whether received in money or
8 otherwise, without any deduction for:
9 (1) the seller's cost of the property sold;
10 (2) the cost of materials used, labor or service cost, interest,
11 losses, all costs of transportation to the seller, all taxes imposed
12 on the seller, and any other expense of the seller;
13 (3) charges by the seller for any services necessary to complete
14 the sale, other than delivery and installation charges;
15 (4) delivery charges, **except as provided in subsection (b)**;
16 (5) installation charges, **except as provided in subsection (b)**; or
17 (6) the value of exempt personal property given to the purchaser

HB 1365—LS 7382/DI 51+



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where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(b) "Gross retail income" does not include that part of the gross receipts attributable to:

(1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract;

(3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(6) delivery charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(7) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(c) A public utility's or a power subsidiary's gross retail income includes all gross retail income received by the public utility or power subsidiary, including any minimum charge, flat charge, membership fee, or any other form of charge or billing.

SECTION 2. IC 6-2.5-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. For purposes of this chapter:

(a) "Use" means the exercise of any right or power of ownership over tangible personal property.

(b) "Storage" means the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana.

(c) "A retail merchant engaged in business in Indiana" includes any retail merchant who makes retail transactions in which a person acquires personal property or services for use, storage, or consumption

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in Indiana and who: ~~maintains:~~

(1) **maintains** an office, place of distribution, sales location, sample location, warehouse, storage place, or other place of business which is located in Indiana and which the retail merchant maintains, occupies, or uses, either permanently or temporarily, either directly or indirectly, and either by ~~himself~~ **the retail merchant** or through ~~an~~ **a representative**, agent, or subsidiary; ~~or~~

(2) **maintains** a representative, agent, salesman, canvasser, or solicitor who, while operating in Indiana under the authority of and on behalf of the retail merchant or a subsidiary of the retail merchant, sells, delivers, **installs, repairs, assembles, sets up, accepts returns of, bills, invoices,** or takes orders for sales of tangible personal property **or services** to be used, stored, or consumed in Indiana;

(3) **is otherwise required to register as a retail merchant under IC 6-2.5-8-1; or**

(4) **may be required by the state to collect tax under this article to the extent allowed under the Constitution of the United States and federal law.**

(d) Notwithstanding any other provision of this section, tangible or intangible property that is:

(1) owned or leased by a person that has contracted with a commercial printer for printing; and

(2) located at the premises of the commercial printer;

shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. A commercial printer with which a person has contracted for printing shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person.

SECTION 3. IC 6-2.5-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. ~~(a)~~ A person is entitled to a credit against the use tax imposed on the use, storage, or consumption of a particular item of tangible personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession of the United States for the acquisition of that property.

~~(b) The credit provided under subsection (a) does not apply to the use tax imposed on the use, storage, or consumption of vehicles, watercraft, or aircraft that are required to be titled, registered, or~~

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licensed by Indiana:

SECTION 4. IC 6-2.5-4-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MARCH 1, 2004 (RETROACTIVE)]: Sec. 11. (a) A person is a retail merchant making a retail transaction when ~~he~~ **the person** furnishes ~~local~~ cable television **or radio** service or ~~intrastate cable~~ **satellite** television **or radio** service **that terminates in Indiana.**

(b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of ~~local~~ cable television **or radio** service or ~~intrastate cable~~ **satellite or radio** television service.

SECTION 5. IC 6-2.5-6-9, AS AMENDED BY P.L.257-2003, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) In determining the amount of state gross retail and use taxes which ~~he~~ **a retail merchant** must remit under section 7 of this chapter, ~~a~~ **the** retail merchant shall, subject to ~~subsection~~ **subsections (c) and (d),** deduct from ~~his~~ **the retail merchant's** gross retail income from retail transactions made during a particular reporting period, an amount equal to ~~his~~ **the retail merchant's** receivables which:

- (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser;
- (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and
- (3) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code during the particular reporting period.

(b) If a retail merchant deducts a receivable under subsection (a) and subsequently collects all or part of that receivable, then the retail merchant shall, subject to subsection ~~(c)(6); (d)(6),~~ include the amount collected as part of ~~his~~ **the retail merchant's** gross retail income from retail transactions for the particular reporting period in which ~~he~~ **the retail merchant** makes the collection.

(c) **This subsection applies only to retail transactions occurring after June 30, 2004. The right to a deduction under this section is assignable only if the retail merchant that paid the state gross retail or use tax liability assigned the right to the deduction in writing.**

(d) The following provisions apply to a deduction for a receivable treated as uncollectible debt under subsection (a):

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- 1 (1) The deduction does not include interest.
- 2 (2) The amount of the deduction shall be determined in the
- 3 manner provided by Section 166 of the Internal Revenue Code for
- 4 bad debts but shall be adjusted to exclude:
 - 5 (A) financing charges or interest;
 - 6 (B) sales or use taxes charged on the purchase price;
 - 7 (C) uncollectible amounts on property that remain in the
 - 8 possession of the seller until the full purchase price is paid;
 - 9 (D) expenses incurred in attempting to collect any debt; and
 - 10 (E) repossessed property.
- 11 (3) The deduction shall be claimed on the return for the period
- 12 during which the receivable is written off as uncollectible in the
- 13 claimant's books and records and is eligible to be deducted for
- 14 federal income tax purposes. For purposes of this subdivision, a
- 15 claimant who is not required to file federal income tax returns
- 16 may deduct an uncollectible receivable on a return filed for the
- 17 period in which the receivable is written off as uncollectible in the
- 18 claimant's books and records and would be eligible for a bad debt
- 19 deduction for federal income tax purposes if the claimant were
- 20 required to file a federal income tax return.
- 21 (4) If the amount of uncollectible receivables claimed as a
- 22 deduction by a retail merchant for a particular reporting period
- 23 exceeds the amount of the retail merchant's taxable sales for that
- 24 reporting period, the retail merchant may file a refund claim
- 25 under IC 6-8.1-9. However, the deadline for ~~the~~ refund claim
- 26 shall be measured from the due date of the return for the reporting
- 27 period on which the deduction for the uncollectible receivables
- 28 could first be claimed.
- 29 (5) If a retail merchant's filing responsibilities have been assumed
- 30 by a certified service provider (as defined in IC 6-2.5-11-2), the
- 31 certified service provider may claim, on behalf of the retail
- 32 merchant, any deduction or refund for uncollectible receivables
- 33 provided by this section. The certified service provider must
- 34 credit or refund the full amount of any deduction or refund
- 35 received to the retail merchant.
- 36 (6) For purposes of reporting a payment received on a previously
- 37 claimed uncollectible receivable, any payments made on a debt or
- 38 account shall be applied first proportionally to the taxable price
- 39 of the property and the state gross retail tax or use tax thereon,
- 40 and secondly to interest, service charges, and any other charges.
- 41 (7) A retail merchant claiming a deduction for an uncollectible
- 42 receivable may allocate that receivable among the states that are

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members of the streamlined sales and use tax agreement if the books and records of the retail merchant support that allocation.

SECTION 6. IC 6-2.5-8-10, AS AMENDED BY P.L.254-2003, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person that:

(1) makes retail transactions from outside Indiana to a destination in Indiana;

(2) does not maintain a place of business in Indiana; and

(3) either:

(A) engages in the regular or systematic soliciting of retail transactions from potential customers in Indiana;

(B) enters into a contract to provide property or services to an agency (as defined in IC 4-13-2-1) or ~~an~~ **a state educational institution of higher education** (as defined in IC 20-12-0.5-1);

~~or~~

(C) agrees to sell property or services to an agency (as defined in IC 4-13-2-1) or ~~an~~ **a state educational institution of higher education** (as defined in IC 20-12-0.5-1); **or**

(D) is closely related to another person that maintains a place of business in Indiana or is described in clause (A), (B), or (C);

shall file an application for a retail merchant's certificate under this chapter and collect and remit tax as provided in this article. Conduct described in subdivision (3)(B) and (3)(C) occurring after June 30, 2003, constitutes consent to be treated under this article as if the person has a place of business in Indiana or is engaging in conduct described in subdivision (3)(A), including the provisions of this article that require a person to collect and remit tax under this article.

(b) A person is rebuttably presumed to be engaging in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person does any of the following:

(1) Distributes catalogs, periodicals, advertising flyers, or other written solicitations of business to potential customers in Indiana, regardless of whether the distribution is by mail or otherwise and without regard to the place from which the distribution originated or in which the materials were prepared.

(2) Displays advertisements on billboards or displays other outdoor advertisements in Indiana.

(3) Advertises in newspapers published in Indiana.

(4) Advertises in trade journals or other periodicals that circulate primarily in Indiana.

(5) Advertises in Indiana editions of a national or regional

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publication or a limited regional edition in which Indiana is included as part of a broader regional or national publication if the advertisements are not placed in other geographically defined editions of the same issue of the same publication.

(6) Advertises in editions of regional or national publications that are not by the contents of the editions geographically targeted to Indiana but that are sold over the counter in Indiana or by subscription to Indiana residents.

(7) Broadcasts on a radio or television station located in Indiana.

(8) Makes any other solicitation by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

(c) A person not maintaining a place of business in Indiana is considered to be engaged in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person engages in any of the activities described in subsection (b) and:

(1) makes at least one hundred (100) retail transactions from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months; or

(2) makes at least ten (10) retail transactions totaling more than one hundred thousand dollars (\$100,000) from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months.

(d) **Subject to subsection (e)**, the location in or outside Indiana of vendors that:

(1) are independent of a person that is soliciting customers in Indiana; and

(2) provide products or services to the person in connection with the person's solicitation of customers in Indiana:

(A) including products and services such as creation of copy, printing, distribution, and recording; but

(B) excluding:

(i) delivery of goods;

(ii) billing or invoicing for the sale of goods;

(iii) providing repairs of goods;

(iv) assembling or setting up goods for use by the purchaser; or

(v) accepting returns of unwanted or damaged goods;

is not to be taken into account in the determination of whether the person is required to collect use tax under this section.

(e) Subsection (d) does not apply if the person soliciting orders is closely related to the vendor.

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(f) For purposes of subsections (a) and (e), a person is closely related to another person if:

(1) the two (2) persons:

(A) use an identical or a substantially similar name, trademark, or good will to develop, promote, or maintain sales;

(B) pay for each other's services in whole or in part contingent on the volume or value of sales; or

(C) share a common business plan or substantially coordinate their business plans; and

(2) either:

(A) one (1) or both of the persons are corporations and:

(i) one (1) person; and

(ii) any other person related to the person in a manner that would require an attribution of stock from the corporation to the person or from the person to the corporation under the attribution rules of Section 318 of the Internal Revenue Code;

own directly, indirectly, beneficially, or constructively at least fifty percent (50%) of the value of the corporation's outstanding stock;

(B) both entities are corporations and an individual stockholder and the members of the stockholder's family (as defined in Section 318 of the Internal Revenue Code) own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the value of both entities' outstanding stock; or

(C) one (1) or both persons are limited liability companies, partnerships, limited liability partnerships, estates, or trusts, and their members, partners, or beneficiaries own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the profits, capital, stock, or value of one (1) or both persons.

SECTION 7. IC 6-3-1-3.5, AS AMENDED BY P.L.1-2004, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 3.5. When used in this article, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

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(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

(3) Subtract one thousand dollars (\$1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars (\$1,000).

(4) Subtract one thousand dollars (\$1,000) for:

(A) each of the exemptions provided by Section 151(c) of the Internal Revenue Code;

(B) each additional amount allowable under Section 63(f) of the Internal Revenue Code; and

(C) the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(5) Subtract:

(A) one thousand five hundred dollars (\$1,500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code for taxable years beginning after December 31, 1996; and

(B) five hundred dollars (\$500) for each additional amount allowable under Section 63(f)(1) of the Internal Revenue Code if the adjusted gross income of the taxpayer, or the taxpayer and the taxpayer's spouse in the case of a joint return, is less than forty thousand dollars (\$40,000).

This amount is in addition to the amount subtracted under subdivision (4).

(6) Subtract an amount equal to the lesser of:

(A) that part of the individual's adjusted gross income (as defined in Section 62 of the Internal Revenue Code) for that taxable year that is subject to a tax that is imposed by a political subdivision of another state and that is imposed on or measured by income; or

(B) two thousand dollars (\$2,000).

(7) Add an amount equal to the total capital gain portion of a lump sum distribution (as defined in Section 402(e)(4)(D) of the Internal Revenue Code) if the lump sum distribution is received by the individual during the taxable year and if the capital gain portion of the distribution is taxed in the manner provided in Section 402 of the Internal Revenue Code.

(8) Subtract any amounts included in federal adjusted gross

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1 income under Section 111 of the Internal Revenue Code as a
 2 recovery of items previously deducted as an itemized deduction
 3 from adjusted gross income.

4 (9) Subtract any amounts included in federal adjusted gross
 5 income under the Internal Revenue Code which amounts were
 6 received by the individual as supplemental railroad retirement
 7 annuities under 45 U.S.C. 231 and which are not deductible under
 8 subdivision (1).

9 (10) Add an amount equal to the deduction allowed under Section
 10 221 of the Internal Revenue Code for married couples filing joint
 11 returns if the taxable year began before January 1, 1987.

12 (11) Add an amount equal to the interest excluded from federal
 13 gross income by the individual for the taxable year under Section
 14 128 of the Internal Revenue Code if the taxable year began before
 15 January 1, 1985.

16 (12) Subtract an amount equal to the amount of federal Social
 17 Security and Railroad Retirement benefits included in a taxpayer's
 18 federal gross income by Section 86 of the Internal Revenue Code.

19 (13) In the case of a nonresident taxpayer or a resident taxpayer
 20 residing in Indiana for a period of less than the taxpayer's entire
 21 taxable year, the total amount of the deductions allowed pursuant
 22 to subdivisions (3), (4), (5), and (6) shall be reduced to an amount
 23 which bears the same ratio to the total as the taxpayer's income
 24 taxable in Indiana bears to the taxpayer's total income.

25 (14) In the case of an individual who is a recipient of assistance
 26 under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7,
 27 subtract an amount equal to that portion of the individual's
 28 adjusted gross income with respect to which the individual is not
 29 allowed under federal law to retain an amount to pay state and
 30 local income taxes.

31 (15) In the case of an eligible individual, subtract the amount of
 32 a Holocaust victim's settlement payment included in the
 33 individual's federal adjusted gross income.

34 (16) For taxable years beginning after December 31, 1999,
 35 subtract an amount equal to the portion of any premiums paid
 36 during the taxable year by the taxpayer for a qualified long term
 37 care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the
 38 taxpayer's spouse, or both.

39 (17) Subtract an amount equal to the lesser of:

40 (A) for a taxable year:

41 (i) including any part of 2004, the amount determined under
 42 subsection (f); and

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- 1 (ii) beginning after December 31, 2004, two thousand five
- 2 hundred dollars (\$2,500); or
- 3 (B) the amount of property taxes that are paid during the
- 4 taxable year in Indiana by the individual on the individual's
- 5 principal place of residence.
- 6 (18) Subtract an amount equal to the amount of a September 11
- 7 terrorist attack settlement payment included in the individual's
- 8 federal adjusted gross income.
- 9 (19) Add or subtract the amount necessary to make the adjusted
- 10 gross income of any taxpayer that owns property for which bonus
- 11 depreciation was allowed in the current taxable year or in an
- 12 earlier taxable year equal to the amount of adjusted gross income
- 13 that would have been computed had an election not been made
- 14 under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to
- 15 apply bonus depreciation to the property in the year that it was
- 16 placed in service.
- 17 **(20) Subject to subsection (g), add an amount equal to**
- 18 **intangibles payments described in section 34 of this chapter**
- 19 **that are directly or indirectly paid, accrued, or incurred to a**
- 20 **related member during the taxable year to the extent the**
- 21 **intangibles payments are deductible in calculating federal**
- 22 **adjusted gross income under the Internal Revenue Code.**
- 23 (b) In the case of corporations, the same as "taxable income" (as
- 24 defined in Section 63 of the Internal Revenue Code) adjusted as
- 25 follows:
- 26 (1) Subtract income that is exempt from taxation under this article
- 27 by the Constitution and statutes of the United States.
- 28 (2) Add an amount equal to any deduction or deductions allowed
- 29 or allowable pursuant to Section 170 of the Internal Revenue
- 30 Code.
- 31 (3) Add an amount equal to any deduction or deductions allowed
- 32 or allowable pursuant to Section 63 of the Internal Revenue Code
- 33 for taxes based on or measured by income and levied at the state
- 34 level by any state of the United States.
- 35 (4) Subtract an amount equal to the amount included in the
- 36 corporation's taxable income under Section 78 of the Internal
- 37 Revenue Code.
- 38 (5) Add or subtract the amount necessary to make the adjusted
- 39 gross income of any taxpayer that owns property for which bonus
- 40 depreciation was allowed in the current taxable year or in an
- 41 earlier taxable year equal to the amount of adjusted gross income
- 42 that would have been computed had an election not been made

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under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code.

(c) In the case of life insurance companies (as defined in Section 816(a) of the Internal Revenue Code) that are organized under Indiana law, the same as "life insurance company taxable income" (as defined in Section 801 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code.

(d) In the case of insurance companies subject to tax under Section 831 of the Internal Revenue Code and organized under Indiana law, the same as "taxable income" (as defined in Section 832 of the Internal Revenue Code), adjusted as follows:

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(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code.

(e) In the case of trusts and estates, "taxable income" (as defined for trusts and estates in Section 641(b) of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the federal adjusted gross income of the estate of a victim of the September 11 terrorist attack or a trust to the extent the trust benefits a victim of the September 11 terrorist attack.

(3) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was

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placed in service.

(4) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code.

(f) This subsection applies only to the extent that an individual paid property taxes in 2004 that were imposed for the March 1, 2002, assessment date or the January 15, 2003, assessment date. The maximum amount of the deduction under subsection (a)(17) is equal to the amount determined under STEP FIVE of the following formula:

STEP ONE: Determine the amount of property taxes that the taxpayer paid after December 31, 2003, in the taxable year for property taxes imposed for the March 1, 2002, assessment date and the January 15, 2003, assessment date.

STEP TWO: Determine the amount of property taxes that the taxpayer paid in the taxable year for the March 1, 2003, assessment date and the January 15, 2004, assessment date.

STEP THREE: Determine the result of the STEP ONE amount divided by the STEP TWO amount.

STEP FOUR: Multiply the STEP THREE amount by two thousand five hundred dollars (\$2,500).

STEP FIVE: Determine the sum of the STEP THREE amount and two thousand five hundred dollars (\$2,500).

(g) An adjustment under subsection (a)(20), (b)(6), (c)(6), (d)(6), or (e)(4) is not required to the extent that:

(1) the taxpayer establishes by a preponderance of the evidence, as determined by the department, that the adjustment is unreasonable;

(2) the taxpayer and the department agree in writing to the application or use of an alternative method of apportionment under IC 6-3-2-2(l); or

(3) the intangibles payments are being paid or incurred to a related member organized under the laws of a country other than the United States, and the other country has entered into a comprehensive income tax treaty with the United States.

SECTION 8. IC 6-3-1-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004] (RETROACTIVE): Sec. 20. The term "business income" means:

(1) income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income

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from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations; **and (2) all other income that the state is not prohibited from taxing under the Constitution of the United States or other federal law.**

SECTION 9. IC 6-3-1-34 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 34. As used in this article, "intangibles payment" means a payment directly connected to the use, maintenance, or management of:**

- (1) stock;**
- (2) bonds;**
- (3) interests in partnerships;**
- (4) licenses;**
- (5) trademarks;**
- (6) copyrights;**
- (7) trade names;**
- (8) trade dress;**
- (9) service marks;**
- (10) mask works;**
- (11) trade secrets;**
- (12) patents; or**
- (13) any other similar types of intangible assets, as determined by the department.**

SECTION 10. IC 6-3-1-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 35. For purposes of this chapter, "related member" means, with respect to any taxpayer during all or any part of a taxable year:**

- (1) a person or corporation that is a related entity;**
- (2) a person or corporation that is a component member (as defined in Section 1563(b) of the Internal Revenue Code);**
- (3) a person or corporation to or from which there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or**
- (4) a person, corporation, partnership, or any other pass through entity that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person or corporation described in subdivision (1), (2), or (3).**

SECTION 11. IC 6-3-1-36 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE

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JANUARY 1, 2004 (RETROACTIVE)]: Sec. 36. As used in this chapter, "related entity" means:

(1) a stockholder who is:

(A) an individual; or

(B) a member of the stockholder's family set forth in Section 318 of the Internal Revenue Code;

if the stockholder and the members of the stockholder's family directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

(2) a:

(A) stockholder; or

(B) stockholder's partnership, estate, trust, corporation, or other pass through entity;

if the stockholder and the stockholder's partnership, estate, trust, or corporation directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or

(3) a:

(A) corporation; or

(B) party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code;

if the taxpayer directly, indirectly, beneficially, or constructively owns a total of at least fifty percent (50%) of the value of the corporation's outstanding stock.

The attribution rules of the Internal Revenue Code apply for purposes of determining whether the ownership requirements of this definition have been met.

SECTION 12. IC 6-3-2-2, AS AMENDED BY P.L.192-2002(ss), SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2. (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

(1) income from real or tangible personal property located in this state;

(2) income from doing business in this state;

(3) income from a trade or profession conducted in this state;

(4) compensation for labor or services rendered within this state;

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(5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter; **and**

(6) any business income, regardless of whether it is described in this subsection.

In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter) only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r) is considered derived from sources within Indiana.

(b) Except as provided in subsection (l) **and subject to subsection (o)**, if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3). However, after a period of two (2) consecutive quarters of income growth and one (1) additional quarter (regardless of any income growth), the fraction shall be computed as follows:

(1) For all taxable years that begin within the first calendar year immediately following the period, the numerator of the fraction is the sum of the property factor plus the payroll factor plus one hundred thirty-three percent (133%) of the sales factor, and the denominator of the fraction is three and thirty-three hundredths (3.33).

(2) For all taxable years that begin within the second calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus one hundred

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1 sixty-seven percent (167%) of the sales factor, and the
 2 denominator of the fraction is three and sixty-seven hundredths
 3 (3.67).

4 (3) For all taxable years beginning on or after January 1 of the
 5 third calendar year following the period, the numerator of the
 6 fraction is the property factor plus the payroll factor plus two
 7 hundred percent (200%) of the sales factor, and the denominator
 8 of the fraction is four (4).

9 For purposes of this subsection, income growth occurs when the state's
 10 nonfarm personal income for a calendar quarter increases in
 11 comparison with the state's nonfarm personal income for the
 12 immediately preceding quarter at an annualized compound rate of five
 13 percent (5%) or more, as determined by the budget agency based on
 14 current dollar figures provided by the Bureau of Economic Analysis of
 15 the United States Department of Commerce or its successor agency.
 16 The annualized compound rate shall be computed in accordance with
 17 the formula $(1+N)^4-1$, where N equals the percentage change in the
 18 state's current dollar nonfarm personal income from one (1) quarter to
 19 the next. As soon as possible after two (2) consecutive quarters of
 20 income growth, the budget agency shall advise the department of the
 21 growth.

22 (c) The property factor is a fraction, the numerator of which is the
 23 average value of the taxpayer's real and tangible personal property
 24 owned or rented and used in this state during the taxable year and the
 25 denominator of which is the average value of all the taxpayer's real and
 26 tangible personal property owned or rented and used during the taxable
 27 year. However, with respect to a foreign corporation, the denominator
 28 does not include the average value of real or tangible personal property
 29 owned or rented and used in a place that is outside the United States.
 30 Property owned by the taxpayer is valued at its original cost. Property
 31 rented by the taxpayer is valued at eight (8) times the net annual rental
 32 rate. Net annual rental rate is the annual rental rate paid by the taxpayer
 33 less any annual rental rate received by the taxpayer from subrentals.
 34 The average of property shall be determined by averaging the values at
 35 the beginning and ending of the taxable year, but the department may
 36 require the averaging of monthly values during the taxable year if
 37 reasonably required to reflect properly the average value of the
 38 taxpayer's property.

39 (d) The payroll factor is a fraction, the numerator of which is the
 40 total amount paid in this state during the taxable year by the taxpayer
 41 for compensation, and the denominator of which is the total
 42 compensation paid everywhere during the taxable year. However, with

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respect to a foreign corporation, the denominator does not include compensation paid in a place that is outside the United States. Compensation is paid in this state if:

- (1) the individual's service is performed entirely within the state;
- (2) the individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state; or

- (3) some of the service is performed in this state and:

- (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or

- (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual is a resident of this state.

(e) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Sales of tangible personal property are in this state if:

- (1) the property is delivered or shipped to a purchaser, other than the United States government, within this state, regardless of the f.o.b. point or other conditions of the sale; or

- (2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and:

- (A) the purchaser is the United States government; or

- (B) the taxpayer is not taxable in the state of the purchaser.

Gross receipts derived from commercial printing as described in IC 6-2.5-1-10 shall be treated as sales of tangible personal property for purposes of this chapter.

(f) Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

- (1) the income-producing activity is performed in this state; or
- (2) the income-producing activity is performed both within and without this state and a greater proportion of the

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income-producing activity is performed in this state than in any other state, based on costs of performance.

(g) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (h) through (k).

(h)(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocated to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(i)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(j) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(k)(1) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the

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taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(l) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(2) the exclusion of any one (1) or more of the factors;

(3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(m) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

(n) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(o) Notwithstanding subsections (l) and (m), the department may

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not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:

(1) a foreign corporation; or

(2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

(p) Notwithstanding subsections (l) and (m), the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection (o)(1) or (o)(2) be reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections (l) and (m).

(q) Notwithstanding subsections (o) and (p), one (1) or more taxpayers may petition the department under subsection (l) for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year.

(r) This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

(1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and

(2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the corporation's annual statement filed with the department of insurance.

SECTION 13. IC 6-3.1-26-8, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 8. (a) As used in this chapter, "qualified investment" means the amount of the taxpayer's expenditures for:

(1) the purchase of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing equipment;

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- (2) the purchase of new computers and related equipment;
- (3) costs associated with the modernization of existing telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;
- (4) onsite infrastructure improvements;
- (5) the construction of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;
- (6) costs associated with retooling existing machinery and equipment; and
- (7) costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry.

that are certified by the board under this chapter as being eligible for the credit under this chapter.

(b) The term does not include property that can be readily moved outside Indiana.

SECTION 14. IC 6-3.1-26-10, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 10. As used in this chapter, "state tax liability growth" means the difference between a taxpayer's state tax liability in a taxable year minus the greater of:

- (1) the taxpayer's state tax liability in the most recent prior taxable year in which the taxpayer claimed part of a credit under this chapter; or
- (2) the taxpayer's base state tax liability,

before the application of a credit under this chapter.

SECTION 15. IC 6-3.1-26-13, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 13. A taxpayer that:

- (1) is awarded a tax credit under this chapter by the board; and
- (2) complies with the conditions set forth in this chapter and the agreement entered into by the board and the taxpayer under this chapter;
- (1) makes a qualified investment; or
- (2) creates the number of jobs required under section 13.5 of this chapter;

is entitled to a credit against the taxpayer's state tax liability in a taxable year.

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SECTION 16. IC 6-3.1-26-13.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 13.5. To qualify for a credit under section 13(2) of this chapter, a taxpayer must increase in a particular taxable year the number of the taxpayer's employees working in Indiana by:**

(1) at least ten (10), in the case of a taxpayer having at least one hundred (100) employees on the first day of the taxpayer's taxable year; or

(2) at least ten percent (10%), in the case of a taxpayer having less than one hundred (100) employees on the first day of the taxpayer's taxable year.

SECTION 17. IC 6-3.1-26-14, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 14. (a) This section applies only to a taxpayer entitled to a credit under section 13(1) of this chapter.**

(b) The total amount of a tax credit ~~claimed~~ **allowed** under this chapter equals thirty percent (30%) of the amount of a qualified investment made by the taxpayer in Indiana. **However, the maximum amount of the credit that a taxpayer may claim in the taxable year in which the taxpayer makes a qualified investment may not exceed the taxpayer's state tax liability growth.**

(b) In the taxable year in which a taxpayer makes a qualified investment, the taxpayer may claim a credit under this chapter in an amount equal to the lesser of:

(1) thirty percent (30%) of the amount of the qualified investment; or

(2) the taxpayer's state tax liability growth.

(c) The taxpayer may carry forward any unused credit.

SECTION 18. IC 6-3.1-26-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 14.5. (a) This section applies only to a taxpayer entitled to a credit under section 13(2) of this chapter.**

(b) The total amount of a tax credit allowed under this chapter equals thirty percent (30%) of the amount of wages and benefits paid to the taxpayer's new employees in the taxable year in which the new employees were first employed. **However, the maximum amount of the credit that a taxpayer may claim in the taxable year in which the new employees were first employed may not exceed the taxpayer's state tax liability growth.**

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1 **(c) The taxpayer may carry forward any unused credit.**

2 SECTION 19. IC 6-3.1-26-15, AS ADDED BY P.L.224-2003,
3 SECTION 197, IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 15. (a) A
5 taxpayer may carry forward an unused credit for not more than nine (9)
6 consecutive taxable years beginning with the taxable year after the
7 taxable year in which the taxpayer makes the qualified investment **or**
8 **hires the number of new employees required under section 13.5 of**
9 **this chapter.**

10 (b) The amount that a taxpayer may carry forward to a particular
11 taxable year under this section equals the lesser of the following:

- 12 (1) The taxpayer's state tax liability growth.
13 (2) The unused part of a credit allowed under this chapter.

14 (c) A taxpayer may:

- 15 (1) claim a tax credit under this chapter for a qualified investment
16 **or for hiring the number of new employees required under**
17 **section 13.5 of this chapter; and**
18 (2) carry forward a remainder for one (1) or more:

19 (A) different qualified investments; **or**

20 (B) **credits claimed for hiring the number of new**
21 **employees required under section 13.5 of this chapter;**
22 in the same taxable year.

23 (d) The total amount of each tax credit claimed under this chapter
24 may not exceed:

- 25 (1) thirty percent (30%) of the qualified investment for which the
26 tax credit is claimed, **in the case of a taxpayer that qualifies for**
27 **a tax credit under section 13(1) of this chapter; or**
28 (2) **thirty percent (30%) of the amount of wages and benefits**
29 **paid to the taxpayer's new employees in the taxable year in**
30 **which the new employees were first employed, in the case of**
31 **a taxpayer that qualifies for a tax credit under section 13(2)**
32 **of this chapter.**

33 SECTION 20. IC 6-3.1-26-16, AS ADDED BY P.L.224-2003,
34 SECTION 197, IS AMENDED TO READ AS FOLLOWS
35 [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 16. If a
36 pass through entity does not have state tax liability ~~growth~~ against
37 which the tax credit may be applied, a shareholder or partner of the
38 pass through entity is entitled to a tax credit **against the shareholder's**
39 **or partner's state tax liability** equal to:

- 40 (1) the tax credit determined for the pass through entity for the
41 taxable year; multiplied by
42 (2) the percentage of the pass through entity's distributive income

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to which the shareholder or partner is entitled.

SECTION 21. IC 6-3.1-26-19, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 19. A person is not entitled to claim the credit provided by this chapter for any jobs that the person relocates from one (1) site in Indiana to another site in Indiana. ~~Determinations under this section shall be made by the board.~~

SECTION 22. IC 6-3.1-26-27 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 27. **To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department of state revenue. The taxpayer shall submit to the department of state revenue all information that the department of state revenue determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether the taxpayer has made a qualified investment as required under section 13 of this chapter or hired the required number of new employees under section 13.5 of this chapter.**

SECTION 23. IC 6-4.1-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) "Class A transferee" means a transferee who is a lineal ancestor or lineal descendant of the transferor.

(b) "Class B transferee" means a transferee who is a:

- (1) brother or sister of the transferor;
- (2) descendant of a brother or sister of the transferor; or
- (3) spouse, widow, or widower of a child of the transferor.

(c) "Class C transferee" means a transferee, except a surviving spouse, who is neither a Class A nor a Class B transferee.

(d) For purposes of this section, a legally adopted child is to be treated as if ~~he~~ **the child** were the natural child of ~~his~~ **the child's** adopting parent **if the adoption occurred before the individual was totally emancipated.** For purposes of this section, if a relationship of loco parentis has existed for at least ten (10) years and if the relationship began before the child's fifteenth birthday, the child is to be considered the natural child of the loco parentis parent.

SECTION 24. IC 6-5.5-1-2, AS AMENDED BY P.L.105-2003, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2. (a) Except as provided in subsections (b) through (d), "adjusted gross income" means taxable

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income as defined in Section 63 of the Internal Revenue Code, adjusted as follows:

(1) Add the following amounts:

(A) An amount equal to a deduction allowed or allowable under Section 166, Section 585, or Section 593 of the Internal Revenue Code.

(B) An amount equal to a deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(C) An amount equal to a deduction or deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by a state of the United States or levied at the local level by any subdivision of a state of the United States.

(D) The amount of interest excluded under Section 103 of the Internal Revenue Code or under any other federal law, minus the associated expenses disallowed in the computation of taxable income under Section 265 of the Internal Revenue Code.

(E) An amount equal to the deduction allowed under Section 172 or 1212 of the Internal Revenue Code for net operating losses or net capital losses.

(F) For a taxpayer that is not a large bank (as defined in Section 585(c)(2) of the Internal Revenue Code), an amount equal to the recovery of a debt, or part of a debt, that becomes worthless to the extent a deduction was allowed from gross income in a prior taxable year under Section 166(a) of the Internal Revenue Code.

(G) ~~Add~~ The amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(H) An amount equal to:

(i) interest expenses and costs; and

(ii) intangible expenses and costs;

directly paid, accrued, or incurred to or in connection with one (1) or more transactions with one (1) or more related members in the taxable year.

(2) Subtract the following amounts:

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- 1 (A) Income that the United States Constitution or any statute
 2 of the United States prohibits from being used to measure the
 3 tax imposed by this chapter.
 4 (B) Income that is derived from sources outside the United
 5 States, as defined by the Internal Revenue Code.
 6 (C) An amount equal to a debt or part of a debt that becomes
 7 worthless, as permitted under Section 166(a) of the Internal
 8 Revenue Code.
 9 (D) An amount equal to any bad debt reserves that are
 10 included in federal income because of accounting method
 11 changes required by Section 585(c)(3)(A) or Section 593 of
 12 the Internal Revenue Code.
 13 (E) ~~Subtract~~ The amount necessary to make the adjusted gross
 14 income of any taxpayer that owns property for which bonus
 15 depreciation was allowed in the current taxable year or in an
 16 earlier taxable year equal to the amount of adjusted gross
 17 income that would have been computed had an election not
 18 been made under Section 168(k)(2)(C)(iii) of the Internal
 19 Revenue Code to apply bonus depreciation.
 20 (b) In the case of a credit union, "adjusted gross income" for a
 21 taxable year means the total transfers to undivided earnings minus
 22 dividends for that taxable year after statutory reserves are set aside
 23 under IC 28-7-1-24.
 24 (c) In the case of an investment company, "adjusted gross income"
 25 means the **sum of the** company's federal taxable income, **as adjusted**
 26 **under subsection (e)**, multiplied by the quotient of:
 27 (1) the aggregate of the gross payments collected by the company
 28 during the taxable year from old and new business upon
 29 investment contracts issued by the company and held by residents
 30 of Indiana; divided by
 31 (2) the total amount of gross payments collected during the
 32 taxable year by the company from the business upon investment
 33 contracts issued by the company and held by persons residing
 34 within Indiana and elsewhere.
 35 (d) As used in subsection (c), "investment company" means a
 36 person, copartnership, association, limited liability company, or
 37 corporation, whether domestic or foreign, that:
 38 (1) is registered under the Investment Company Act of 1940 (15
 39 U.S.C. 80a-1 et seq.); and
 40 (2) solicits or receives a payment to be made to itself and issues
 41 in exchange for the payment:
 42 (A) a so-called bond;

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1 (B) a share;
 2 (C) a coupon;
 3 (D) a certificate of membership;
 4 (E) an agreement;
 5 (F) a pretended agreement; or
 6 (G) other evidences of obligation;
 7 entitling the holder to anything of value at some future date, if the
 8 gross payments received by the company during the taxable year
 9 on outstanding investment contracts, plus interest and dividends
 10 earned on those contracts (by prorating the interest and dividends
 11 earned on investment contracts by the same proportion that
 12 certificate reserves (as defined by the Investment Company Act
 13 of 1940) is to the company's total assets) is at least fifty percent
 14 (50%) of the company's gross payments upon investment
 15 contracts plus gross income from all other sources except
 16 dividends from subsidiaries for the taxable year. The term
 17 "investment contract" means an instrument listed in clauses (A)
 18 through (G).

19 **(e) The federal adjusted gross income of an investment company**
 20 **shall be adjusted by adding an amount equal to:**

21 **(1) interest expenses and costs; and**
 22 **(2) intangible expenses and costs;**
 23 **directly or indirectly paid, accrued, or incurred to or in connection**
 24 **with one (1) or more transactions with one (1) or more related**
 25 **members in the taxable year.**

26 **(f) An adjustment under subsection (a)(1)(H) or (e) is not**
 27 **required to the extent that:**

28 **(1) the taxpayer establishes by a preponderance of the**
 29 **evidence, as determined by the department, that the**
 30 **adjustment is unreasonable;**
 31 **(2) the taxpayer and the department agree in writing to the**
 32 **application or use of an alternative method of apportionment;**
 33 **or**
 34 **(3) the intangibles payments are being paid or incurred to a**
 35 **related member organized under the laws of a country other**
 36 **than the United States, and the other country has entered into**
 37 **a comprehensive income tax treaty with the United States.**

38 SECTION 25. IC 6-5.5-1-10.5 IS ADDED TO THE INDIANA
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 10.5. For**
 41 **purposes of this chapter, "intangible investments" means**
 42 **investments in:**

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- (1) patents;
- (2) patent applications;
- (3) trademarks;
- (4) trade names;
- (5) copyrights;
- (6) similar types of intangible assets; and
- (7) debt obligations of related members.

SECTION 26. IC 6-5.5-1-12.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 12.5. For purposes of this chapter, "related member" means, with respect to any taxpayer during all or any part of a taxable year an entity:**

- (1) that is a related entity;
- (2) that is a component member (as defined in Section 1563(b) of the Internal Revenue Code);
- (3) to or from which there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or
- (4) that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person or corporation described in subdivision (1), (2), or (3).

SECTION 27. IC 6-5.5-1-12.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 12.6. (a) As used in this chapter, "intangible expenses and costs" includes expenses, losses, and costs for, related to, or in connection directly or indirectly with the direct or indirect:**

- (1) acquisition;
- (2) use;
- (3) maintenance or management;
- (4) ownership;
- (5) sale; or
- (6) exchange;

of or any other direct or indirect disposition of intangible investments to the extent that the amounts are allowed as deductions or costs in determining taxable income before operating loss deductions and special deductions for the taxable year under the Internal Revenue Code.

(b) The term includes losses related to or incurred in connection directly or indirectly with:

- (1) factoring transactions;
- (2) losses related to or incurred in connection directly or

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indirectly with:

- (A) discounting transactions;
- (B) royalty, patent, technical, and copyright fees;
- (C) licensing fees; and
- (D) other similar expenses and costs.

SECTION 28. IC 6-5.5-1-12.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 12.7. For purposes of this chapter, "interest expenses and costs" includes amounts directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue Code.**

SECTION 29. IC 6-5.5-1-12.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 12.8. As used in this chapter, "related entity" means:**

(1) a stockholder who is:

- (A) an individual; or
- (B) a member of the stockholder's family set forth in Section 318 of the Internal Revenue Code;

if the stockholder and the members of the stockholder's family directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

(2) a:

- (A) stockholder; or
- (B) stockholder's partnership, estate, trust, or corporation; if the stockholder and the stockholder's partnership, estate, trust, or corporation directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or

(3) a:

- (A) corporation; or
- (B) party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code;

if the taxpayer directly, indirectly, beneficially, or constructively owns a total of at least fifty percent (50%) of the value of the corporation's outstanding stock.

The attribution rules of the Internal Revenue Code apply for purposes of determining whether the ownership requirements of

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1 **this definition have been met.**

2 SECTION 30. IC 6-8.1-3-16, AS AMENDED BY P.L.192-2002(ss),
3 SECTION 141, IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) The department shall
5 prepare a list of all outstanding tax warrants for listed taxes each
6 month. The list shall identify each taxpayer liable for a warrant by
7 name, address, amount of tax, and either Social Security number or
8 employer identification number. Unless the department renews the
9 warrant, the department shall exclude from the list a warrant issued
10 more than ten (10) years before the date of the list. The department
11 shall certify a copy of the list to the bureau of motor vehicles.

12 (b) The department shall prescribe and furnish tax release forms for
13 use by tax collecting officials. A tax collecting official who collects
14 taxes in satisfaction of an outstanding warrant shall issue to the
15 taxpayers named on the warrant a tax release stating that the tax has
16 been paid. The department may also issue a tax release:

17 (1) to a taxpayer who has made arrangements satisfactory to the
18 department for the payment of the tax; or

19 (2) by action of the commissioner under IC 6-8.1-8-2(k).

20 (c) The department may not issue or renew:

21 (1) a certificate under IC 6-2.5-8;

22 (2) a license under IC 6-6-1.1 or IC 6-6-2.5; or

23 (3) a permit under IC 6-6-4.1;

24 to a taxpayer whose name appears on the most recent monthly warrant
25 list, unless that taxpayer pays the tax, makes arrangements satisfactory
26 to the department for the payment of the tax, or a release is issued
27 under IC 6-8.1-8-2(k).

28 (d) The bureau of motor vehicles shall, before issuing the title to a
29 motor vehicle under IC 9-17, determine whether the purchaser's or
30 assignee's name is on the most recent monthly warrant list. If the
31 purchaser's or assignee's name is on the list, the bureau shall enter as
32 a lien on the title the name of the state as the lienholder unless the
33 bureau has received notice from the commissioner under
34 IC 6-8.1-8-2(k). The tax lien on the title:

35 (1) is subordinate to a perfected security interest (as defined and
36 perfected in accordance with IC 26-1-9.1); and

37 (2) shall otherwise be treated in the same manner as other title
38 liens.

39 (e) The commissioner is the custodian of all titles for which the state
40 is the sole lienholder under this section. Upon receipt of the title by the
41 department, the commissioner shall notify the owner of the
42 department's receipt of the title.

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(f) The department shall reimburse the bureau of motor vehicles for all costs incurred in carrying out this section.

(g) Notwithstanding IC 6-8.1-8, a person who is authorized to collect taxes, interest, or penalties on behalf of the department under IC 6-3 or IC 6-3.5 may not, except as provided in subsection (h) or (i), receive a fee for collecting the taxes, interest, or penalties if:

(1) the taxpayer pays the taxes, interest, or penalties as consideration for the release of a lien placed under subsection (d) on a motor vehicle title; or

(2) the taxpayer has been denied a certificate or license under subsection (c) within sixty (60) days before the date the taxes, interest, or penalties are collected.

(h) In the case of a sheriff, subsection (g) does not apply if:

(1) the sheriff collects the taxes, interest, or penalties within sixty (60) days after the date the sheriff receives the tax warrant; or

(2) the sheriff collects the taxes, interest, or penalties through the sale or redemption, in a court proceeding, of a motor vehicle that has a lien placed on its title under subsection (d).

(i) In the case of a person other than a sheriff:

(1) subsection (g)(2) does not apply if the person collects the taxes, interests, or penalties within sixty (60) days after the date the commissioner employs the person to make the collection; and

(2) subsection (g)(1) does not apply if the person collects the taxes, interest, or penalties through the sale or redemption, in a court proceeding, of a motor vehicle that has a lien placed on its title under subsection (d).

(j) IC 5-14-3-4, IC 6-8.1-7-1, and any other law exempting information from disclosure by the department does not apply to this subsection. From the list prepared under subsection (a), the department shall compile each month a list of the taxpayers subject to tax warrants that:

(1) were issued at least twelve (12) months before the date of the list; and

(2) are for amounts that exceed one thousand dollars (\$1,000).

The list compiled under this subsection must identify each taxpayer liable for a warrant by name, address, and amount of tax. The department shall publish the list compiled under this subsection on accessIndiana (as defined in IC 5-21-1-1.5) and make the list available for public inspection and copying under IC 5-14-3. The department or an agent, employee, or officer of the department is immune from liability for the publication of information under this subsection.

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(k) The department may not publish a list under subsection (j) that identifies a particular taxpayer unless at least two (2) weeks before the publication of the list the department sends notice to the taxpayer stating that the taxpayer:

(1) is subject to a tax warrant that:

(A) was issued at least twelve (12) months before the date of the notice; and

(B) is for an amount that exceeds one thousand dollars (\$1,000); and

(2) will be identified on a list to be published on accessIndiana unless a tax release is issued to the taxpayer under subsection (b).

SECTION 31. IC 9-29-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. The registration fee for each semitrailer to be used with a tractor licensed under this section is as follows:

(1) Thirty dollars (\$30) for a one (1) year registration.

(2) Sixty dollars (\$60) for a five (5) year registration. However, the five (5) year registration fee shall be reduced by twelve dollars (\$12) for each full year after the initial year of the five (5) year period provided in IC 9-18. However, the reduced fee may not be less than the registration fee for a one (1) year registration.

(3) For a permanent registration, the fee is as follows:

~~(A) sixty-five dollars (\$65). at the time the semitrailer is first registered.~~

~~(B) Two dollars (\$2) annually to renew the registration.~~

SECTION 32. IC 34-30-2-16.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 16.7. IC 6-8.1-3-16(j) (Concerning the department of state revenue for publishing a list of delinquent taxpayers).**

SECTION 33. THE FOLLOWING ARE REPEALED [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: IC 6-3.1-26-2; IC 6-3.1-26-3; IC 6-3.1-26-5; IC 6-3.1-26-12; IC 6-3.1-26-17; IC 6-3.1-26-18; IC 6-3.1-26-20; IC 6-3.1-26-21; IC 6-3.1-26-22; IC 6-3.1-26-23; IC 6-3.1-26-24; IC 6-3.1-26-25; IC 6-3.1-26-26; P.L.224-2003, SECTION 198.

SECTION 34. IC 6-2.5-5-15 IS REPEALED [EFFECTIVE JULY 1, 2004].

SECTION 35. IC 9-18-9-4 IS REPEALED [EFFECTIVE JULY 1, 2004].

SECTION 36. [EFFECTIVE JANUARY 1, 2004

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(RETROACTIVE)] Subject to carryovers authorized by IC 6-3.1-26-15, as amended by this act, IC 6-3.1-26, as amended by this act, applies to taxable years beginning after December 31, 2004.

SECTION 37. [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)] IC 6-3.1-26-13.5, IC 6-3.1-26-14.5, and IC 6-3.1-26-27, all as added by this act, apply to taxable years beginning after December 31, 2003.

SECTION 38. [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)] (a) IC 6-2.5-3-5, as amended by this act, applies only to vehicles, watercraft, and aircraft that are initially titled, registered, or licensed in Indiana after June 30, 2004.

(b) IC 6-2.5-4-11, as amended by this act, applies only to transactions occurring after March 1, 2004. A retail transaction to which IC 6-2.5-4-11, as amended by this act, applies shall be considered as having occurred after March 1, 2004, if charges are collected for the retail transactions upon original statements and billings dated after March 31, 2004.

(c) IC 6-2.5-8-10, as amended by this act, and the repeal of IC 6-2.5-5-15 by this act apply only to retail transactions occurring after June 30, 2004. A retail transaction shall be considered as having occurred after June 30, 2004, to the extent that delivery of the property or services constituting selling at retail is made after that date to the purchaser or to the place of delivery designated by the purchaser. However, a transaction shall be considered as having occurred before July 1, 2004, to the extent that the agreement of the parties to the transaction was entered into before July 1, 2004, and payment for the property or services furnished in the transaction is made before July 1, 2004, notwithstanding the delivery of the property or services after June 30, 2004.

(d) IC 6-2.5-6-9, as amended by this act, applies only to deductions assigned after June 30, 2004.

(e) The following provisions apply only to taxable years beginning after December 31, 2003:

(1) IC 6-3-1-3.5.

(2) IC 6-5.5-1-2.

(f) IC 6-4.1-1-3, as amended by this act, applies only to an adopting parent who dies after June 30, 2004.

SECTION 39. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1365, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. For purposes of this chapter:

(a) "Use" means the exercise of any right or power of ownership over tangible personal property.

(b) "Storage" means the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana.

(c) "A retail merchant engaged in business in Indiana" includes any retail merchant who makes retail transactions in which a person acquires personal property **or services** for use, storage, or consumption in Indiana and who: ~~maintains~~:

(1) **maintains** an office, place of distribution, sales location, sample location, warehouse, storage place, or other place of business which is located in Indiana and which the retail merchant maintains, occupies, or uses, either permanently or temporarily, either directly or indirectly, and either by ~~himself~~ **the retail merchant** or through ~~an~~ **a representative**, agent, or subsidiary; ~~or~~

(2) **maintains** a representative, agent, salesman, canvasser, or solicitor who, while operating in Indiana under the authority of and on behalf of the retail merchant or a subsidiary of the retail merchant, sells, delivers, **installs, repairs, assembles, sets up, accepts returns of, bills, invoices**, or takes orders for sales of tangible personal property **or services** to be used, stored, or consumed in Indiana;

(3) **is otherwise required to register as a retail merchant under IC 6-2.5-8-1; or**

(4) **may be required by the state to collect tax under this article to the extent allowed under the Constitution of the United States and federal law.**

(d) Notwithstanding any other provision of this section, tangible or intangible property that is:

(1) owned or leased by a person that has contracted with a commercial printer for printing; and

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(2) located at the premises of the commercial printer; shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. A commercial printer with which a person has contracted for printing shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person."

Page 3, between lines 33 and 34, begin a new paragraph and insert:
 "SECTION 5. IC 6-2.5-8-10, AS AMENDED BY P.L.254-2003, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person that:

- (1) makes retail transactions from outside Indiana to a destination in Indiana;
- (2) does not maintain a place of business in Indiana; and
- (3) either:
 - (A) engages in the regular or systematic soliciting of retail transactions from potential customers in Indiana;
 - (B) enters into a contract to provide property or services to an agency (as defined in IC 4-13-2-1) or ~~an~~ **a state educational institution of higher education** (as defined in IC 20-12-0.5-1); ~~or~~
 - (C) agrees to sell property or services to an agency (as defined in IC 4-13-2-1) or an institution of higher education (as defined in IC 20-12-0.5-1); **or**
 - (D) is closely related to another person that maintains a place of business in Indiana or is described in clause (A), (B), or (C);**

shall file an application for a retail merchant's certificate under this chapter and collect and remit tax as provided in this article. Conduct described in subdivision (3)(B) and (3)(C) occurring after June 30, 2003, constitutes consent to be treated under this article as if the person has a place of business in Indiana or is engaging in conduct described in subdivision (3)(A), including the provisions of this article that require a person to collect and remit tax under this article.

(b) A person is rebuttably presumed to be engaging in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person does any of the following:

- (1) Distributes catalogs, periodicals, advertising flyers, or other written solicitations of business to potential customers in Indiana, regardless of whether the distribution is by mail or otherwise and without regard to the place from which the distribution originated

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or in which the materials were prepared.

(2) Displays advertisements on billboards or displays other outdoor advertisements in Indiana.

(3) Advertises in newspapers published in Indiana.

(4) Advertises in trade journals or other periodicals that circulate primarily in Indiana.

(5) Advertises in Indiana editions of a national or regional publication or a limited regional edition in which Indiana is included as part of a broader regional or national publication if the advertisements are not placed in other geographically defined editions of the same issue of the same publication.

(6) Advertises in editions of regional or national publications that are not by the contents of the editions geographically targeted to Indiana but that are sold over the counter in Indiana or by subscription to Indiana residents.

(7) Broadcasts on a radio or television station located in Indiana.

(8) Makes any other solicitation by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

(c) A person not maintaining a place of business in Indiana is considered to be engaged in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person engages in any of the activities described in subsection (b) and:

(1) makes at least one hundred (100) retail transactions from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months; or

(2) makes at least ten (10) retail transactions totaling more than one hundred thousand dollars (\$100,000) from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months.

(d) **Subject to subsection (e)**, the location in or outside Indiana of vendors that:

(1) are independent of a person that is soliciting customers in Indiana; and

(2) provide products or services to the person in connection with the person's solicitation of customers in Indiana:

(A) including products and services such as creation of copy, printing, distribution, and recording; **but**

(B) excluding:

(i) delivery of goods;

(ii) billing or invoicing for the sale of goods;

(iii) providing repairs of goods;

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(iv) assembling or setting up goods for use by the purchaser; or

(v) accepting returns of unwanted or damaged goods;

is not to be taken into account in the determination of whether the person is required to collect use tax under this section.

(e) Subsection (d) does not apply if the person soliciting orders is closely related to the vendor.

(f) For purposes of subsections (a) and (e), a person is closely related to another person if:

(1) the two (2) persons:

(A) use an identical or a substantially similar name, trademark, or good will to develop, promote, or maintain sales;

(B) pay for each other's services in whole or in part contingent on the volume or value of sales; or

(C) share a common business plan or substantially coordinate their business plans; and

(2) either:

(A) one (1) or both of the persons are corporations and:

(i) one (1) person; and

(ii) any other person related to the person in a manner that would require an attribution of stock from the corporation to the person or from the person to the corporation under the attribution rules of Section 318 of the Internal Revenue Code;

own directly, indirectly, beneficially, or constructively at least fifty percent (50%) of the value of the corporation's outstanding stock;

(B) both entities are corporations and an individual stockholder and the members of the stockholder's family (as defined in Section 318 of the Internal Revenue Code) own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the value of both entities' outstanding stock; or

(C) one (1) or both persons are limited liability companies, partnerships, limited liability partnerships, estates, or trusts, and their members, partners, or beneficiaries own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the profits, capital, stock, or value of one (1) or both persons."

Page 9, between lines 34 and 35, begin a new paragraph and insert:

"(g) An adjustment under subsection (a)(20), (b)(6), (c)(6),

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(d)(6), or (e)(4) is not required to the extent that:

- (1) the taxpayer establishes by clear and convincing evidence, as determined by the department, that the adjustment is unreasonable; or
- (2) the taxpayer and the department agree in writing to the application or use of an alternative method of apportionment under IC 6-3-2-2(l).

SECTION 7. IC 6-3-1-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004] (RETROACTIVE)]: Sec. 20. The term "business income" means:

- (1) income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations; and
- (2) all other income that the state is not prohibited from taxing under the Constitution of the United States or other federal law."

Page 10, line 12, delete "any of the following:" and insert " with respect to any taxpayer during all or any part of a taxable year, is:

- (1) a person or corporation that is a related entity;
- (2) a person or corporation that is a component member (as defined in Section 1563(b) of the Internal Revenue Code);
- (3) a person or corporation to or from which there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or
- (4) a person, corporation, or partnership that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person or corporation described in subdivision (1), (2), or (3)."

Page 10, delete lines 13 through 37.

Page 11, between lines 28 and 29, begin a new paragraph and insert:

"SECTION 12. IC 6-3-1-38 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 38. As used in this chapter, "related entity" means:

- (1) a stockholder who is:
 - (A) an individual; or
 - (B) a member of the stockholder's family set forth in Section 318 of the Internal Revenue Code;
 if the stockholder and the members of the stockholder's family directly, indirectly, beneficially, or constructively own

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a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

(2) a:

(A) stockholder; or

(B) stockholder's partnership, estate, trust, or corporation; if the stockholder and the stockholder's partnership, estate, trust, or corporation directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or

(3) a:

(A) corporation; or

(B) party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code; if the taxpayer directly, indirectly, beneficially, or constructively owns a total of at least fifty percent (50%) of the value of the corporation's outstanding stock.

The attribution rules of the Internal Revenue Code apply for purposes of determining whether the ownership requirements of this definition have been met.

SECTION 13. IC 6-3-2-2, AS AMENDED BY P.L.192-2002(ss), SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2. (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

(1) income from real or tangible personal property located in this state;

(2) income from doing business in this state;

(3) income from a trade or profession conducted in this state;

(4) compensation for labor or services rendered within this state; and

(5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter; and

(6) any business income, regardless of whether it is described in this subsection.

In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions

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of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter) only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r) is considered derived from sources within Indiana.

(b) Except as provided in subsection (l) **and subject to subsection (o)**, if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3). However, after a period of two (2) consecutive quarters of income growth and one (1) additional quarter (regardless of any income growth), the fraction shall be computed as follows:

(1) For all taxable years that begin within the first calendar year immediately following the period, the numerator of the fraction is the sum of the property factor plus the payroll factor plus one hundred thirty-three percent (133%) of the sales factor, and the denominator of the fraction is three and thirty-three hundredths (3.33).

(2) For all taxable years that begin within the second calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus one hundred sixty-seven percent (167%) of the sales factor, and the denominator of the fraction is three and sixty-seven hundredths (3.67).

(3) For all taxable years beginning on or after January 1 of the third calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus two hundred percent (200%) of the sales factor, and the denominator of the fraction is four (4).

For purposes of this subsection, income growth occurs when the state's

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nonfarm personal income for a calendar quarter increases in comparison with the state's nonfarm personal income for the immediately preceding quarter at an annualized compound rate of five percent (5%) or more, as determined by the budget agency based on current dollar figures provided by the Bureau of Economic Analysis of the United States Department of Commerce or its successor agency. The annualized compound rate shall be computed in accordance with the formula $(1+N)^4-1$, where N equals the percentage change in the state's current dollar nonfarm personal income from one (1) quarter to the next. As soon as possible after two (2) consecutive quarters of income growth, the budget agency shall advise the department of the growth.

(c) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year. However, with respect to a foreign corporation, the denominator does not include the average value of real or tangible personal property owned or rented and used in a place that is outside the United States. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The average of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

(d) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the taxable year. However, with respect to a foreign corporation, the denominator does not include compensation paid in a place that is outside the United States. Compensation is paid in this state if:

- (1) the individual's service is performed entirely within the state;
- (2) the individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state; or
- (3) some of the service is performed in this state and:
 - (A) the base of operations or, if there is no base of operations,

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the place from which the service is directed or controlled is in this state; or

(B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual is a resident of this state.

(e) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Sales of tangible personal property are in this state if:

(1) the property is delivered or shipped to a purchaser, other than the United States government, within this state, regardless of the f.o.b. point or other conditions of the sale; or

(2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and:

(A) the purchaser is the United States government; or

(B) the taxpayer is not taxable in the state of the purchaser.

Gross receipts derived from commercial printing as described in IC 6-2.5-1-10 shall be treated as sales of tangible personal property for purposes of this chapter.

(f) Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

(1) the income-producing activity is performed in this state; or

(2) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(g) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (h) through (k).

(h)(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are

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allocated to this state:

- (i) if and to the extent that the property is utilized in this state; or
- (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(i)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

- (i) the property had a situs in this state at the time of the sale; or
- (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(j) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(k)(1) Patent and copyright royalties are allocable to this state:

- (i) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or
- (ii) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or

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other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(l) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one (1) or more of the factors;
- (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(m) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

(n) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

- (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
- (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(o) Notwithstanding subsections (l) and (m), the department may not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:

- (1) a foreign corporation; or
- (2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

(p) Notwithstanding subsections (l) and (m), the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection (o)(1) or (o)(2) be

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reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections (l) and (m).

(q) Notwithstanding subsections (o) and (p), one (1) or more taxpayers may petition the department under subsection (l) for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year.

(r) This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

- (1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and
- (2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the corporation's annual statement filed with the department of insurance."

Page 17, after line 42, begin a new paragraph and insert:

"(f) An adjustment under subsection (a)(1)(H) or (e) is not required to the extent that:

- (1) the taxpayer establishes by clear and convincing evidence, as determined by the department, that the adjustment is unreasonable; or**
- (2) the taxpayer and the department agree in writing to the application or use of an alternative method of apportionment.**

Page 18, line 21, delete "any of the" and insert **" with respect to any taxpayer during all or any part of a taxable year, is an entity:**

- (1) that is a related entity;**
- (2) that is a component member (as defined in Section 1563(b) of the Internal Revenue Code);**
- (3) to or from which there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or**
- (4) that, notwithstanding its form of organization, bears the**

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same relationship to the taxpayer as a person or corporation described in subdivision (1), (2), or (3)."

Page 18, delete lines 22 through 42.

Page 19, delete lines 1 through 5.

Page 19, between lines 38 and 39, begin a new paragraph and insert:

"SECTION 21. IC 6-5.5-1-12.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 12.8. As used in this chapter, "related entity" means:

(1) a stockholder who is:

(A) an individual; or

(B) a member of the stockholder's family set forth in Section 318 of the Internal Revenue Code;

if the stockholder and the members of the stockholder's family directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

(2) a:

(A) stockholder; or

(B) stockholder's partnership, estate, trust, or corporation;

if the stockholder and the stockholder's partnership, estate, trust, or corporation directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or

(3) a:

(A) corporation; or

(B) party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code;

if the taxpayer directly, indirectly, beneficially, or constructively owns a total of at least fifty percent (50%) of the value of the corporation's outstanding stock.

The attribution rules of the Internal Revenue Code apply for purposes of determining whether the ownership requirements of this definition have been met."

Page 20, line 9, delete "The" and insert **"IC 6-2.5-8-10, as amended by this act, and the"**.

Page 20, line 9, delete "applies" and insert **"apply"**.

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1365 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 17, nays 10.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 3, line 30, after "(c)" insert "**This subsection applies only to retail transactions occurring after June 30, 2004.**".

Page 3, line 30, delete "not"

Page 3, line 30, delete "." and insert "**only if the retail merchant that paid the state gross retail or use tax liability assigned the right to the deduction in writing.**".

(Reference is to HB 1365 as printed January 27, 2004.)

MAYS

HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 31, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 23. IC 6-8.1-3-16, AS AMENDED BY P.L.192-2002(ss), SECTION 141, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) The department shall prepare a list of all outstanding tax warrants for listed taxes each month. The list shall identify each taxpayer liable for a warrant by name, address, amount of tax, and either Social Security number or employer identification number. Unless the department renews the warrant, the department shall exclude from the list a warrant issued more than ten (10) years before the date of the list. The department shall certify a copy of the list to the bureau of motor vehicles.

(b) The department shall prescribe and furnish tax release forms for use by tax collecting officials. A tax collecting official who collects taxes in satisfaction of an outstanding warrant shall issue to the taxpayers named on the warrant a tax release stating that the tax has been paid. The department may also issue a tax release:

- (1) to a taxpayer who has made arrangements satisfactory to the department for the payment of the tax; or
- (2) by action of the commissioner under IC 6-8.1-8-2(k).

(c) The department may not issue or renew:

- (1) a certificate under IC 6-2.5-8;
- (2) a license under IC 6-6-1.1 or IC 6-6-2.5; or
- (3) a permit under IC 6-6-4.1;

HB 1365—LS 7382/DI 51+



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to a taxpayer whose name appears on the most recent monthly warrant list, unless that taxpayer pays the tax, makes arrangements satisfactory to the department for the payment of the tax, or a release is issued under IC 6-8.1-8-2(k).

(d) The bureau of motor vehicles shall, before issuing the title to a motor vehicle under IC 9-17, determine whether the purchaser's or assignee's name is on the most recent monthly warrant list. If the purchaser's or assignee's name is on the list, the bureau shall enter as a lien on the title the name of the state as the lienholder unless the bureau has received notice from the commissioner under IC 6-8.1-8-2(k). The tax lien on the title:

- (1) is subordinate to a perfected security interest (as defined and perfected in accordance with IC 26-1-9.1); and
- (2) shall otherwise be treated in the same manner as other title liens.

(e) The commissioner is the custodian of all titles for which the state is the sole lienholder under this section. Upon receipt of the title by the department, the commissioner shall notify the owner of the department's receipt of the title.

(f) The department shall reimburse the bureau of motor vehicles for all costs incurred in carrying out this section.

(g) Notwithstanding IC 6-8.1-8, a person who is authorized to collect taxes, interest, or penalties on behalf of the department under IC 6-3 or IC 6-3.5 may not, except as provided in subsection (h) or (i), receive a fee for collecting the taxes, interest, or penalties if:

- (1) the taxpayer pays the taxes, interest, or penalties as consideration for the release of a lien placed under subsection (d) on a motor vehicle title; or
- (2) the taxpayer has been denied a certificate or license under subsection (c) within sixty (60) days before the date the taxes, interest, or penalties are collected.

(h) In the case of a sheriff, subsection (g) does not apply if:

- (1) the sheriff collects the taxes, interest, or penalties within sixty (60) days after the date the sheriff receives the tax warrant; or
- (2) the sheriff collects the taxes, interest, or penalties through the sale or redemption, in a court proceeding, of a motor vehicle that has a lien placed on its title under subsection (d).

(i) In the case of a person other than a sheriff:

- (1) subsection (g)(2) does not apply if the person collects the taxes, interests, or penalties within sixty (60) days after the date the commissioner employs the person to make the collection; and
- (2) subsection (g)(1) does not apply if the person collects the

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taxes, interest, or penalties through the sale or redemption, in a court proceeding, of a motor vehicle that has a lien placed on its title under subsection (d).

(j) IC 5-14-3-4, IC 6-8.1-7-1, and any other law exempting information from disclosure by the department does not apply to this subsection. From the list prepared under subsection (a), the department shall compile each month a list of the taxpayers subject to tax warrants that:

(1) were issued at least twelve (12) months before the date of the list; and

(2) are for amounts that exceed one thousand dollars (\$1,000).

The list compiled under this subsection must identify each taxpayer liable for a warrant by name, address, and amount of tax. The department shall publish the list compiled under this subsection on accessIndiana (as defined in IC 5-21-1-1.5) and make the list available for public inspection and copying under IC 5-14-3. The department or an agent, employee, or officer of the department is immune from liability for the publication of information under this subsection.

(k) The department may not publish a list under subsection (j) that identifies a particular taxpayer unless at least two (2) weeks before the publication of the list the department sends notice to the taxpayer stating that the taxpayer:

(1) is subject to a tax warrant that:

(A) was issued at least twelve (12) months before the date of the notice; and

(B) is for an amount that exceeds one thousand dollars (\$1,000); and

(2) will be identified on a list to be published on accessIndiana unless a tax release is issued to the taxpayer under subsection (b).

SECTION 24. IC 34-30-2-16.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16.7. IC 6-8.1-3-16(j) (Concerning the department of state revenue for publishing a list of delinquent taxpayers)."

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

TURNER

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 10, delete lines 13 through 15.
 Page 11, delete lines 3 through 5.
 Page 13, delete lines 4 through 6.
 Page 22, delete lines 17 through 42.
 Delete pages 23 through 24.
 Page 25, delete lines 1 through 26.
 Page 31, delete lines 37 through 42.
 Page 32, delete line 1.
 Page 32, line 2, delete "(g)" and insert "(f)".
 Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

TURNER

HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-1-5, AS AMENDED BY P.L.257-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Except as provided in subsection (b), "gross retail income" means the total gross receipts, of any kind or character, received in a retail transaction, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges, **except as provided in subsection (b);**
- (5) installation charges, **except as provided in subsection (b);** or
- (6) the value of exempt personal property given to the purchaser

HB 1365—LS 7382/DI 51+



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where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(b) "Gross retail income" does not include that part of the gross receipts attributable to:

(1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract;

(3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(6) delivery charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(7) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(c) A public utility's or a power subsidiary's gross retail income includes all gross retail income received by the public utility or power subsidiary, including any minimum charge, flat charge, membership fee, or any other form of charge or billing."

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

ESPICH

HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 27, line 2, delete "or indirectly".

HB 1365—LS 7382/DI 51+



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Page 29, delete lines 1 through 4.
 Page 29, line 5, delete "(5)" and insert "(1)".
 Page 29, line 6, delete "(6)" and insert "(2)".
 Page 29, line 7, delete "(7)" and insert "(3)".
 Page 29, line 8, delete "(8)" and insert "(4)".
 Page 29, line 9, delete "(9)" and insert "(5)".
 Page 29, line 10, delete "(10)" and insert "(6)".
 Page 29, line 11, delete "(11) other debt obligations, including" and insert "(7)".
 Page 29, line 39, delete "property" and insert "**investments**".
 (Reference is to HB 1365 as printed January 27, 2004.)

FRENZ

HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 5, line 7, strike "an".
 Page 5, line 7, after "an" insert "**a state educational**".
 Page 5, line 7, strike "of higher education".
 Page 10, delete lines 7 through 12, begin a new line block indented and insert:
"(20) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal adjusted gross income under the Internal Revenue Code."
 Page 10, delete lines 39 through 42, begin a new line block indented and insert:
"(6) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code."
 Page 11, delete lines 1 through 2.
 Page 11, delete lines 29 through 34, begin a new line block indented and insert:

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"(6) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code."

Page 12, delete lines 16 through 21, begin a new line block indented and insert:

"(6) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code."

Page 12, delete lines 40 through 42, begin a new line block indented and insert:

"(4) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code."

Page 13, delete lines 1 through 3.

Page 13, line 27, delete "clear and convincing" and insert **"a preponderance of the"**.

Page 13, line 29, delete "or".

Page 13, line 32, delete "." and insert **"; or"**.

Page 13, between lines 32 and 33, begin a new line block indented and insert:

"(3) the intangibles payments are being paid or incurred to a related member organized under the laws of a country other than the United States, and the other country has entered into a comprehensive income tax treaty with the United States."

Page 14, delete lines 2 through 17, begin a new paragraph and insert:

"SECTION 8. IC 6-3-1-34 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 34. As used in this article, "intangibles payment" means a payment directly connected to the use, maintenance, or management of:

- (1) stock;**
- (2) bonds;**



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- (3) interests in partnerships;
- (4) licenses;
- (5) trademarks;
- (6) copyrights;
- (7) trade names;
- (8) trade dress;
- (9) service marks;
- (10) mask works;
- (11) trade secrets;
- (12) patents; or
- (13) any other similar types of intangible assets, as determined by the department."

Page 14, line 21, after "means" insert ",".

Page 14, line 22, delete ", is".

Page 14, line 29, delete "or partnership" and insert "**partnership, or any other pass through entity**".

Page 14, delete lines 33 through 42.

Page 15, delete lines 1 through 23.

Page 15, line 24, delete "IC 6-3-1-38" and insert "IC 6-3-1-36".

Page 15, line 26, delete "38" and insert "**36**".

Page 15, line 38, after "trust," delete "or".

Page 15, line 38, delete ";" and insert "**, or other pass through entity;**".

Page 28, line 33, delete "clear and convincing" and insert "**a preponderance of the**".

Page 28, line 35, delete "or".

Page 28, line 37, delete "." and insert "**; or**".

Page 28, between lines 37 and 38, begin a new line block indented and insert:

"(3) the intangibles payments are being paid or incurred to a related member organized under the laws of a country other than the United States, and the other country has entered into a comprehensive income tax treaty with the United States."

Page 29, line 4, delete "a".

Page 29, line 16, after "means" insert ",".

Page 29, line 17, delete ", is".

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 5, line 7, strike "an" and insert "**a state educational**".

Page 7, line 7, strike "of higher education".

Page 14, line 21, after "means" insert ",".

Page 14, line 22, after "year" delete ", is".

Page 25, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 16. IC 6-3.1-26-8, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 8. (a) As used in this chapter, "qualified investment" means the amount of the taxpayer's expenditures for:

- (1) the purchase of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing equipment;
- (2) the purchase of new computers and related equipment;
- (3) costs associated with the modernization of existing telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;
- (4) onsite infrastructure improvements;
- (5) the construction of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;
- (6) costs associated with retooling existing machinery and equipment; and
- (7) costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry.

~~that are certified by the board under this chapter as being eligible for the credit under this chapter.~~

(b) The term does not include property that can be readily moved outside Indiana.

SECTION 2. IC 6-3.1-26-10, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 10. As used in this chapter, "state tax liability growth" means the difference between a taxpayer's state tax liability in a taxable year minus ~~the greater of:~~

- (1) the taxpayer's state tax liability in the most recent prior taxable year in which the taxpayer claimed part of a credit under this

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~~chapter; or~~

(2) the taxpayer's base state tax liability,
before the application of a credit under this chapter.

SECTION 3. IC 6-3.1-26-13, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 13. A taxpayer that:

~~(1) is awarded a tax credit under this chapter by the board; and~~
~~(2) complies with the conditions set forth in this chapter and the agreement entered into by the board and the taxpayer under this chapter;~~

(1) makes a qualified investment; or

(2) creates the number of jobs required under section 13.5 of this chapter;

is entitled to a credit against the taxpayer's state tax liability in a taxable year.

SECTION 4. IC 6-3.1-26-13.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 13.5. To qualify for a credit under section 13(2) of this chapter, a taxpayer must increase in a particular taxable year the number of the taxpayer's employees working in Indiana by:**

(1) at least ten (10), in the case of a taxpayer having at least one hundred (100) employees on the first day of the taxpayer's taxable year; or

(2) at least ten percent (10%), in the case of a taxpayer having less than one hundred (100) employees on the first day of the taxpayer's taxable year.

SECTION 5. IC 6-3.1-26-14, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 14. (a) **This section applies only to a taxpayer entitled to a credit under section 13(1) of this chapter.**

(b) The total amount of a tax credit ~~claimed~~ allowed under this chapter equals thirty percent (30%) of the amount of a qualified investment made by the taxpayer in Indiana. However, the maximum amount of the credit that a taxpayer may claim in the taxable year in which the taxpayer makes a qualified investment may not exceed the taxpayer's state tax liability growth.

~~(b) In the taxable year in which a taxpayer makes a qualified investment, the taxpayer may claim a credit under this chapter in an amount equal to the lesser of:~~

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(1) thirty percent (30%) of the amount of the qualified investment; or

(2) the taxpayer's state tax liability growth;

(c) The taxpayer may carry forward any unused credit.

SECTION 6. IC 6-3.1-26-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 14.5. (a) This section applies only to a taxpayer entitled to a credit under section 13(2) of this chapter.**

(b) The total amount of a tax credit allowed under this chapter equals thirty percent (30%) of the amount of wages and benefits paid to the taxpayer's new employees in the taxable year in which the new employees were first employed. However, the maximum amount of the credit that a taxpayer may claim in the taxable year in which the new employees were first employed may not exceed the taxpayer's state tax liability growth.

(c) The taxpayer may carry forward any unused credit.

SECTION 7. IC 6-3.1-26-15, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 15. (a) A taxpayer may carry forward an unused credit for not more than nine (9) consecutive taxable years beginning with the taxable year after the taxable year in which the taxpayer makes the qualified investment or hires the number of new employees required under section 13.5 of this chapter.**

(b) The amount that a taxpayer may carry forward to a particular taxable year under this section equals the lesser of the following:

(1) The taxpayer's state tax liability growth.

(2) The unused part of a credit allowed under this chapter.

(c) A taxpayer may:

(1) claim a tax credit under this chapter for a qualified investment **or for hiring the number of new employees required under section 13.5 of this chapter;** and

(2) carry forward a remainder for one (1) or more:

(A) different qualified investments; **or**

(B) **credits claimed for hiring the number of new employees required under section 13.5 of this chapter;**

in the same taxable year.

(d) The total amount of each tax credit claimed under this chapter may not exceed:

(1) thirty percent (30%) of the qualified investment for which the tax credit is claimed, **in the case of a taxpayer that qualifies for**

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a tax credit under section 13(1) of this chapter; or
 (2) thirty percent (30%) of the amount of wages and benefits paid to the taxpayer's new employees in the taxable year in which the new employees were first employed, in the case of a taxpayer that qualifies for a tax credit under section 13(2) of this chapter.

SECTION 8. IC 6-3.1-26-16, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 16. If a pass through entity does not have state tax liability ~~growth~~ against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit **against the shareholder's or partner's state tax liability** equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

SECTION 9. IC 6-3.1-26-19, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 19. A person is not entitled to claim the credit provided by this chapter for any jobs that the person relocates from one (1) site in Indiana to another site in Indiana. ~~Determinations under this section shall be made by the board.~~

SECTION 10. IC 6-3.1-26-27 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 27. **To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department of state revenue. The taxpayer shall submit to the department of state revenue all information that the department of state revenue determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether the taxpayer has made a qualified investment as required under section 13 of this chapter or hired the required number of new employees under section 13.5 of this chapter."**

Page 29, line 4, delete "a".

Page 29, line 16, after "means" insert ",".

Page 29, line 17, after "year" delete ", is".

Page 31, between lines 6 and 7, begin a new paragraph and insert:
 "SECTION 11. THE FOLLOWING ARE REPEALED

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[EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: IC 6-3.1-26-2; IC 6-3.1-26-3; IC 6-3.1-26-5; IC 6-3.1-26-12; IC 6-3.1-26-17; IC 6-3.1-26-18; IC 6-3.1-26-20; IC 6-3.1-26-21; IC 6-3.1-26-22; IC 6-3.1-26-23; IC 6-3.1-26-24; IC 6-3.1-26-25; IC 6-3.1-26-26; P.L.224-2003, SECTION 198.

SECTION 12. [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)] **Subject to carryovers authorized by IC 6-3.1-26-15, as amended by this act, IC 6-3.1-26, as amended by this act, applies to taxable years beginning after December 31, 2004.**

SECTION 13. [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)] **IC 6-3.1-26-13.5, IC 6-3.1-26-14.5, and IC 6-3.1-26-27, all as added by this act, apply to taxable years beginning after December 31, 2003."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be made a Special Order of Business for 5, February 5, 2004, at 7:30 pm.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be recommitted to a Committee of One, its author, with specific instructions to amend as follows:

Page 34, between lines 12 and 13, begin a new paragraph and insert:
"SECTION 31. IC 9-29-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. The registration fee for each semitrailer to be used with a tractor licensed under this section is as follows:

- (1) Thirty dollars (\$30) for a one (1) year registration.
- (2) Sixty dollars (\$60) for a five (5) year registration. However, the five (5) year registration fee shall be reduced by twelve dollars (\$12) for each full year after the initial year of the five (5) year period provided in IC 9-18. However, the reduced fee may not be less than the registration fee for a one (1) year registration.
- (3) For a permanent registration, the fee is ~~as follows:~~
 - (A) ~~sixty-five dollars (\$65). at the time the semitrailer is first registered.~~
 - (B) ~~Two dollars (\$2) annually to renew the registration."~~

Page 34, between lines 25 and 26, begin a new paragraph and insert:
"SECTION 35. IC 9-18-9-4 IS REPEALED [EFFECTIVE JULY 1, 2004].".

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as reprinted February 5, 2004.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred House Bill 1365, begs leave to report that said bill has been amended as directed.

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